



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

May 22, 2003

Mr. Bill Ainsworth
Assistant City Attorney
City of Corpus Christi
P. O. Box 9277
Corpus Christi, Texas 78469-9277

OR2003-3446

Dear Mr. Ainsworth:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181486.

The City of Corpus Christi (the "city") received a request for eleven categories of information concerning a specified period of time and pertaining to a contract to collect court fines and fees. You claim that portions of the requested information are excepted from disclosure pursuant to sections 552.110 and 552.305 of the Government Code.¹ We have considered your claimed exception to disclosure.

We note that section 552.301(e) of the Government Code requires that a governmental body that requests an attorney general decision under section 552.301(a) must, within a reasonable time, but not later than the fifteenth business day after the date of receiving the written request, submit to the attorney general, among other items, written comments stating the reasons why any exceptions to disclosure apply that would allow requested information to be withheld from disclosure and a copy of the specific information requested, or representative samples of it if a voluminous amount was requested, labeled to indicate which exceptions apply to which parts of the copy. *See* Gov't Code § 552.301(e). To date, the city has not submitted either of these two items to us for review. Thus, we find that the city has failed to comply with section 552.301 of the Government Code in requesting this decision from us.

Because the city failed to comply with the procedural requirements of section 552.301 with regard to the requested information, the information at issue is now presumed public. *See*

¹ We note that section 552.305 is not an exception to disclosure under the Public Information Act. Accordingly, we do not address whether any portion of the requested information is excepted from disclosure pursuant to section 552.305 of the Government Code.

Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The city must demonstrate a compelling interest in order to overcome the presumption that this information is now public. *See id.* Normally, a compelling interest is demonstrated when some other source of law makes the requested information confidential or when third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Although the city claims that portions of the requested information are excepted from disclosure pursuant to section 552.110 of the Government Code, we have no basis for concluding that they are so excepted under this exception to disclosure because the city failed to submit any portion of the requested information to us for our review. Furthermore, we have no indication from the city that it notified any interested third party of the request for information pursuant to section 552.305 of the Government Code. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under Public Information Act in certain circumstances). Accordingly, we conclude that the city must release the entirety of the information at issue to the requestor.

However, we caution the city that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code § 552.352. Prior to releasing the information at issue, the city should ensure that it does not contain any such confidential information. If the city believes that any portion of the information at issue is indeed confidential and may not lawfully be released, the city must challenge this ruling in court as outlined below.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

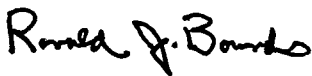
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 181486

c: Mr. Rand J. Riklin
Goode Casseb Jones Riklin Choate & Watson
P.O. Box 120480
San Antonio, Texas 78212-9680